



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 4722/05 Mehmet Yilmaz against Cyprus  
and 3 other applications (see list appended)

The European Court of Human Rights (Fourth Section), sitting on  
28 August 2012 as a Chamber composed of:

Lech Garlicki, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. de Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above applications lodged on the dates set out in the  
appendix,

Having deliberated, decides as follows:

THE FACTS AND COMPLAINTS

1. A list of the applicants is set out in the appendix.

**A. The circumstances of the case**

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

The applicants are either owners, or the heirs of owners, of property which is governed by the custodianship regime under Law 139/1991.

None of the applicants have taken proceedings in the domestic courts or brought such proceedings to a conclusion. The third applicant in no. 5702/10 claims to have proceedings pending but no documents or details have been provided.

*i. Yilmaz v. Cyprus, no. 4722/059*

3. The applicant is the heir of his grandfather who owned properties in the Republic of Cyprus. He stated that he was unable to access or enjoy these properties.

He complains under Article 1 of Protocol No. 1 and Article 14 of the Convention.

*ii. Nizamoğlu v Cyprus, no. 57491/11*

4. The applicant who lived with his family near Larnaca in the south of Cyprus prior to 1974 owned a number of properties, as did his deceased wife and other members of his family, also now deceased. Following 2003, the applicant sought to take steps to recover possession of this property. He instructed a lawyer who however took no steps to take proceedings. On 26 January 2011, the applicant sent a letter to the Minister of the Interior, listing the properties and requesting their return and compensation; he sent a follow-up letter in April 2011. He has received no substantive response.

5. The applicant invokes Article 1 of Protocol No. 1 and Article 8 as regards the properties, Articles 6 and 13 alleging lack of access to court and lack of an effective remedy and Article 14 alleging discrimination against Turkish Cypriots.

*iii. Ethem v. Cyprus, no. 70337/11*

6. Various property including houses, fields and shops were transferred to the applicant by his father and mother between 2004-2007. This property was administered by the Custodian under Law 139/1991. On 31 March 2011, the applicant wrote to the Ministry of the Interior, requesting return of the properties and full compensation for loss of use since 1974. He has received no reply.

7. The applicant invokes Article 1 of Protocol No. 1 and Article 8 as regards the properties, Articles 6 and 13 alleging lack of access to court and lack of an effective remedy and Article 14 alleging discrimination against Turkish Cypriots.

*iv. Coshkouner v. Cyprus no. 70581/11*

8. The applicant, a Turkish Cypriot, bought land in 1962 and rented it out. The tenant paid rent until 1974 when the authorities took over the applicant's property.

9. On 15 August 2011, the applicant wrote to the Ministry of the Interior, requesting return of the properties and full compensation for loss of use since 1974. She received a response in September 2011 that the application would be examined and she would be informed in due course. She has received no further reply.

10. The applicant invokes Article 1 of Protocol No. 1 and Article 8 as regards the properties, Articles 6 and 13 alleging lack of access to court and lack of an effective remedy and Article 14 alleging discrimination against Turkish Cypriots.

### **B. Relevant domestic law and practice**

11. The relevant case-law and laws are set out in *Kazali and Others v. Cyprus* (no. 49247 et al, §§ 34-100, decision of 6 March 2012).

### **THE LAW**

12. The applicants complained of interference with property rights, claiming that they were unable to enjoy possession, or sell or transfer, or obtain compensation for loss of use of such property, which was subject to the custodianship regime imposed by Law 139/1991 in respect of property regarded as having been abandoned by Turkish-Cypriot owners in 1974.

13. The applicants invoked principally Article 1 of Protocol No. 1 which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

14. Some of the applicants also invoked Articles 8 (protection of home and private life) and 14 (prohibition of discrimination) in respect of these complaints.

15. The Court notes that none of the applicants have shown that they have brought proceedings in the courts of Cyprus raising their various complaints. The Court recalls that in 2010 the impugned Law 139/1991 was amended to include express provisions indicating that the Custodian could lift the custodianship on Turkish-Cypriot properties and that persons could apply to the District Court where they considered that their rights had been

violated in respect of decisions relating to that property and wished to apply for compensation in that regard.

16. Various applicants have asserted that such proceedings would be pointless, referring to case-law of the domestic courts, particularly of the Supreme Court in the context of cases lodged pursuant to Article 146, where Law 139/1991 had been found justified on the ground of the law of necessity.

17. In the recent decision of *Kazali* (cited above), the Court acknowledged that the case-law of the Cypriot courts cited by the parties, which pre-dated the entry into force of the amended Law, indicated a resistance to the argument that the provisions of Law 139/1991 violated the Convention, and in particular Article 1 of Protocol No. 1. However, there was as yet no reference in domestic court decisions to the new legislative provisions, in particular, section 6A of Law 139/1991, and as a consequence the Court considered that it was not clear how the courts would approach their task of interpreting the provisions of the amended Law. In the event of an unsuccessful decision in the District Court, an appeal would be possible to the Supreme Court. The Court was satisfied that, in examining cases brought under the amended Law, the Cypriot courts would have due regard to this Court's case-law concerning, in particular, Article 8 and Article 1 of Protocol No. 1 and that in handing down judgments they would examine the matter afresh, setting out in full their reasoning and explaining clearly whether and how the restrictions imposed on Turkish-Cypriots' property are justified under those Articles.

18. Insofar as it is also alleged that it is not entirely clear the extent to which the provisions contained in Law 139/1991 apply to applicants whose properties have been compulsorily purchased or requisitioned or whether compensation could be withheld under section 9 of the Law, the Court in the *Kazali* decision (cited above) found that the new section 6A referred to the rejection of a "claim" by the Custodian giving rise to a right to bring an action in the District Court and allege a violation of the Convention. Nothing presented to the Court by the Government or the applicants in those cases was found to preclude an application being made to the Custodian for payment of compensation agreed by the Custodian in respect of compulsory acquisition or requisition of Turkish-Cypriot property; proceedings could also be taken in the courts in the event of an unfavourable decision. The Court found:

"152. In conclusion, the new provisions in Law 139/1991 are formulated in broad terms and by express reference to the guarantees of the Convention as interpreted by this Court. They allow the applicants to make a claim to the Custodian alleging a violation of their Convention rights and, in the absence of a favourable response, to lodge a case in the District Court. The remedies available include an order for restoration of the property and an order for payment of compensation to cover pecuniary and non-pecuniary damage as well as costs and expenses.

153. The Court therefore cannot exclude that Law 139/1991 as amended provides an accessible and effective framework of redress in respect of complaints about interference with the property owned by Turkish Cypriots. The applicant property owners in the present cases have not made use of this mechanism and their complaints under Articles 8 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention must therefore be rejected for non-exhaustion of domestic remedies...”

19. The Court finds no reason to differ from this conclusion in the present applications. The complaints under Article 1 of Protocol No. 1 and Articles 8 and 14 of the Convention must therefore be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

20. Insofar as some of the applicants invoke Articles 6 and 13 of the Convention, complaining of lack of access to court and lack of an effective remedy, the Court refers to its reasoning above that the applicants can bring their claims before the domestic courts and apply for a range of remedies. These parts of the applications must therefore be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Joins* the applications;

*Declares* the applications inadmissible.

Fatoş Aracı  
Deputy Registrar

Lech Garlicki  
President

## APPENDIX

<b>No</b>	<b>Application No</b>	<b>Lodged on</b>	<b>Applicant Date of birth Place of residence Nationality</b>	<b>Represented by</b>
<b>1.</b>	4722/05	14/01/2005	<b>Mehmet YILMAZ</b> 16/09/1935 Antalya Turkish	
<b>2.</b>	57491/11	22/08/2011	<b>Asim NIZAMOGLU</b> 14/01/1930 Cypriot	Yaprak RENDA
<b>3.</b>	70337/11	26/09/2011	<b>Omer ETHEM</b> 29/10/1951 Barnet British	Omer ETHEMSOY
<b>4.</b>	70581/11	26/09/2011	<b>Sitkiye IZZET COSHKOUNER</b> 18/05/1941 London Cypriot	Mustafa ESAT